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Paper No. 21

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OFFICE OF PETITIONS

In re Application of :  
Baker, Basoglu, Cutler, Gervasio, :  
Lee, Mundkur, Nojiri, O'Donnell, : ON PETITION  
Poole, Raman, Rehm, Thekkath :  
Application No. 09/173,297 :  
Filed: October 14, 1998 :  
For: A Data Streamer :

**REQUIREMENT FOR INFORMATION**

This is in response to the Request for Reconsideration of Petition Under 37 CFR 1.47(a)<sup>1</sup>, filed September 17, 2001, noting the joinder of the legal representative of the deceased inventor.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address following issue(s) before a decision is rendered. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

**BACKGROUND**

The above-identified application was filed on October 14, 1998, without an executed oath or declaration, naming twelve (12) inventors. On November 10, 1998, a "Notice to File Missing Parts of Application" was mailed by this Office, requiring an executed oath or declaration, a surcharge for the late filing of the oath or declaration, and deficient filing and claim fees.

In response, on May 13, 1999 (Certificate of Mailing date May 10, 1999), petitioner obtained a four-month extension of time and timely filed a Petition, along with payment of the various fees. The Petition was dismissed by this Office, in a decision mailed on December 22, 2000, (hereinafter "Dismissal"), as inappropriate under the Manual of Patent Examining Procedure ("MPEP"), section 409.03(d).

Petitioner responded on April 2, 2001, with a Request for Reconsideration of Petition Under 37 CFR 1.47(a), and a Petition to Make Application Under 37 CFR 1.42, wherein Petitioner averred that the non-signing inventor, David Poole, "may" be deceased, thereby rendering the grounds for the Dismissal moot.

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<sup>1</sup>The Certificate of Mailing (37 C.F.R. 1.8a) certifies that "the attached Request for Reconsideration of Petition under 37 CFR 1.42 . . ." are being deposited. However, it is noted that 37 CFR 1.42 provides a method to proceed with the application when the inventor is dead, and does not require a petition.

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That Petition was dismissed in a Decision mailed on June 14, 2001, which advised Petitioner of the requirements for proceeding under 37 CFR 1.42, and 37 CFR 1.47.

Petitioner responds with the instant Petition wherein Petitioner has complied with 37 CFR 1.42 for nonsigning inventor David Poole. However, a close inspection of the file reveals that the Supplemental Declaration submitted by inventor Eric Rehm fails to satisfy 37 CFR 1.63 because it does not identify each of the inventors.

#### LAW

Thirty seven CFR section 1.63(a)(4) requires an oath or declaration to "[s]tate that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought."

#### REQUIREMENT

An oath or declaration in compliance with 37 CFR 1.63 and 1.64, for Eric Rehm, is REQUIRED. See MPEP 409.03(b).

#### ALTERNATE VENUE

Should Petitioner be unable to obtain the signature of Eric Rehm after providing him with the application, including the specification, claims and drawings at his last known post office address, Petitioner may proceed under 37 CFR 1.47(a), to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

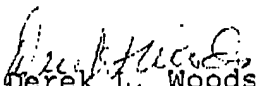
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

  
Derek L. Woods  
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Office of Petitions  
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for Patent Examination Policy